

1 KEVIN V. RYAN (SBN 118321)
United States Attorney
2 JOANN M. SWANSON (SBN 88143)
Chief, Civil Division
3 EDWIN L. JOE (SBN 112328)
Special Assistant United States Attorney

4
5 455 Market Street, 6th Floor
6 San Francisco, California 94105-2420
7 Telephone: (415) 744-8494
8 Facsimile: (202) 481-1810 or (415) 744-6812
Email: edwin.joe@sba.gov

9 Attorneys for Federal Plaintiff

10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN FRANCISCO DIVISION**

14 **UNITED STATES OF AMERICA,**
15 **Plaintiff,**

16 **v.**

17 **MILEPOST VENTURES, L.P.**

18 **Defendant.**
19
20

Civil Case No. C 05 – 1195 EMC

Stipulation for Receivership Order

(Cover Page) ; Order

mc

E-filing

8:05CV 278

OFFICE OF THE CLERK

05 JUN 14 PM 1:07

FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA

RECEIVED

JUN 14 2005

STIPULATION FOR CONSENT ORDER OF RECEIVERSHIP

CLERK
U.S. DISTRICT COURT
OMAHA

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

3
4 **UNITED STATES OF AMERICA,**)
5 **Plaintiff,**)

6 **v.**)

7 **MILEPOST VENTURES, L.P.**)

8 **Defendant.**)
9)
10)

Civil Case No. C 05 – 1195 EMC

Receivership Order

11 **CONSENT ORDER OF RECEIVERSHIP**

12 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

13 1. Pursuant to the provisions 15 U.S.C. §687c, this Court hereby takes
14 exclusive jurisdiction of Milepost Ventures, L.P. ("MILEPOST"), and all of its assets and
15 property, of whatever kind and wherever located, and the United States Small Business
16 Administration ("SBA") is hereby appointed Receiver of MILEPOST ("Receiver") to
17 serve without bond until further order of this Court. The Receiver is appointed for the
18 purpose of marshaling and liquidating all of MILEPOST's assets and satisfying the
19 claims of creditors therefrom in the order of priority as determined by this Court.

20 2. The Receiver shall have all powers, authorities, rights and privileges
21 heretofore possessed by the officers, directors, managers and general and limited partners
22 of MILEPOST under applicable state and federal law, by the Articles of Limited
23 Partnership, and By-Laws of said limited partnership, in addition to all powers and
24 authority of a receiver at equity, and all powers and authority conferred upon the
25 Receiver by the provisions of 15 U.S.C. § 687c and 28 U.S.C. § 754. The trustees,
26
27
28

STIPULATION FOR CONSENT ORDER OF RECEIVERSHIP

1 directors, officers, managers, employees, investment advisors, accountants, attorneys and
2 other agents of MILEPOST are hereby dismissed and the powers of any general partners
3 are hereby suspended. Such persons and entities shall have no authority with respect to
4 MILEPOST's operations or assets, except to the extent as may hereafter be expressly
5 granted by the Receiver. The Receiver shall assume and control the operation of
6 MILEPOST and shall pursue and preserve all of its claims.

8 3. The Receiver is entitled to take immediate possession of all assets, bank
9 accounts or other financial accounts, books and records and all other documents or
10 instruments relating to MILEPOST. The past and/or present officers, directors, agents,
11 managers, general and limited partners, trustees, attorneys, accountants, and employees
12 of MILEPOST, as well as all those acting in their place, are hereby ordered and directed
13 to turn over to the Receiver forthwith all books, records, documents, accounts and all
14 other instruments and papers of and relating to MILEPOST and all of MILEPOST's
15 assets and all other assets and property of the limited partnership, whether real or
16 personal. Milepost Ventures Management, Inc., the general partner of MILEPOST shall
17 furnish a written statement within five (5) days after the entry of this Order, listing the
18 identity, location and estimated value of all assets of MILEPOST, a list of all employees
19 (and job titles thereof), other personnel, attorneys, accountants and any other agents or
20 contractors of MILEPOST, as well as the names, addresses and amounts of claims of all
21 known creditors of MILEPOST. Within thirty (30) days following the entry of this
22 Order, Milepost Ventures Management, Inc., the general partner of MILEPOST shall also
23 furnish a written report describing all assets. All persons and entities having control,
24
25
26
27
28

STIPULATION FOR CONSENT ORDER OF RECEIVERSHIP

1 custody or possession of any assets or property of MILEPOST are hereby directed to turn
2 such assets and property over to the Receiver.

3 4. The Receiver shall promptly give notice of its appointment to all known
4 officers, directors, agents, employees, shareholders, creditors, debtors, managers and
5 general and limited partners of MILEPOST, as the Receiver deems necessary or
6 advisable to effectuate the operation of the receivership. All persons and entities owing
7 any obligation, debt, or distribution with respect to a partnership interest to MILEPOST
8 shall, until further ordered by this Court, pay all such obligations in accordance with the
9 terms thereof to the Receiver and its receipt for such payments shall have the same force
10 and effect as if MILEPOST had received such payments.

11 5. The Receiver is hereby authorized to open such Receiver's accounts at
12 banking or other financial institutions to extend credit on behalf of MILEPOST, to utilize
13 SBA personnel, and to employ such other personnel as it may deem necessary to
14 effectuate the operation of the receivership including, but not limited to, attorneys,
15 accountants, consultants and appraisers, and is further authorized to expend receivership
16 funds to compensate such personnel in such amounts and upon such terms as the
17 Receiver shall deem reasonable in light of the usual fees and billing practices and
18 procedures of such personnel. The Receiver is not required to obtain Court approval
19 prior to the disbursement of receivership funds for payments to personnel employed by
20 the Receiver or for expenses that the Receiver deems advantageous to the orderly
21 administration and operation of the receivership. In addition, the Receiver is authorized
22 to reimburse the SBA for travel expenses incurred by SBA personnel in the establishment
23 and administration of the receivership. The Receiver may, without further order of this
24
25
26
27
28

STIPULATION FOR CONSENT ORDER OF RECEIVERSHIP

1 Court, transfer, compromise, or otherwise dispose of any claim or asset in the ordinary
2 course of business, other than real estate.

3 6. MILEPOST's past and/or present officers, directors, agents, attorneys,
4 managers, shareholders, employees, accountants, debtors, creditors, managers and
5 general and limited partners of MILEPOST, and other appropriate persons or entities
6 (including without limitation, the defendant's portfolio of small business concerns and
7 financial institutions doing business with defendant and/or defendant's portfolio of small
8 business concerns) shall answer under oath to the Receiver all questions which the
9 Receiver may put to them and produce any documents as required by the Receiver
10 regarding the business of said limited partnership, or any other matter relevant to the
11 operation or administration of the receivership or the collection of funds due to
12 MILEPOST. In the event that the Receiver deems it necessary to require the appearance
13 of the aforementioned persons or entities, the Receiver shall make its discovery request(s)
14 in accordance with the Federal Rules of Civil Procedure.

15 7. The parties to any and all civil legal proceedings of any nature, including,
16 but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions,
17 default proceedings, or other actions of any nature involving MILEPOST or any assets of
18 MILEPOST, including subsidiaries and partnerships, wherever located, and excluding the
19 instant proceeding, involving MILEPOST, the Receiver, or any of MILEPOST's past or
20 present officers, directors, managers, agents, or general or limited partners sued for, or in
21 connection with, any action taken by them while acting in such capacity of any nature,
22 whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise,
23 are enjoined from commencing or continuing any such legal proceeding, or from taking
24
25
26
27
28

STIPULATION FOR CONSENT ORDER OF RECEIVERSHIP

1 any action, in connection with any such proceeding or any such asset. All civil legal
2 proceedings of any nature, including but not limited to bankruptcy proceedings,
3 arbitration proceedings, foreclosure actions, default proceedings, or other action of any
4 nature involving MILEPOST or any assets of MILEPOST, including subsidiaries and
5 partnerships, wherever located, and excluding the instant proceeding, involving
6 MILEPOST, the Receiver, or any of MILEPOST's past or present officers, directors,
7 managers, agents, or general or limited partners sued for, or in connection with, any
8 action taken by them while acting in such capacity of any nature, whether as plaintiff,
9 defendant, third-party plaintiff, third-party defendant, or otherwise, are stayed in their
10 entirety, and all Courts having any jurisdiction thereof are enjoined from taking or
11 permitting any action until further Order of this Court. Further, as to a cause of action
12 accrued or accruing in favor of MILEPOST against a third person or party, any
13 applicable statute of limitation is tolled during the period in which this injunction against
14 commencement of legal proceedings is in effect as to that cause of action.

18 8. MILEPOST and its past and/or present directors, officers, managers,
19 general or limited partners, agents, employees and other persons or entities acting in
20 concert or participating therewith be, and they hereby are, enjoined from either directly or
21 indirectly taking any actions or causing any such action to be taken which would
22 dissipate the assets and/or property of MILEPOST to the detriment of MILEPOST or of
23 the Receiver appointed in this cause, including but not limited to destruction of corporate
24 records, or which would violate the Small Business Investment Act of 1958, as amended,
25 15 U.S.C. 661 et. seq., or the regulations promulgated thereunder, ("Regulations"), 13
26 C.F.R. §107.1 et. seq.

STIPULATION FOR CONSENT ORDER OF RECEIVERSHIP

9. The Receiver is authorized to borrow on behalf of MILEPOST, from the SBA, up to \$500,000 and is authorized to cause MILEPOST to issue Receiver's Certificates of Indebtedness in the principal amounts of the sums borrowed, which certificates will bear interest at or about 10 percent per annum and will have a maturity date no later than 18 months after the date of issue. Said Receiver's Certificates of Indebtedness shall have priority over all other debts and obligations of MILEPOST, excluding administrative expenses of the Receivership, whether currently existing or hereinafter incurred, including without limitation any claims of general or limited partners of MILEPOST.

10. This Court determines and adjudicates that SBA has made a sufficient showing that MILEPOST has violated the Act and the Regulations, as alleged in the Complaint filed against MILEPOST in the instant action, to obtain the relief so requested.

DATED this 13 day of January, 2005.

UNITED STATES DISTRICT COURT JUDGE

SEEN, STIPULATED AND AGREED:

Milepost Ventures, L.P., through its authorized representative

By: /s/ Christine B. Cordano

Title: General Partner
Milepost Ventures Management, Inc.
General Partner of Milepost Ventures, L.P.

Date: _____
United States Small Business Administration

By: /s/ Thomas G. Morris, Director

Office of Liquidation

Date: 01-26-05

STIPULATION FOR CONSENT ORDER OF RECEIVERSHIP

9. The Receiver is authorized to borrow on behalf of MILEPOST, from the SBA, up to \$500,000 and is authorized to cause MILEPOST to issue Receiver's Certificates of Indebtedness in the principal amounts of the sums borrowed, which certificates will bear interest at or about 10 percent per annum and will have a maturity date no later than 18 months after the date of issue. Said Receiver's Certificates of Indebtedness shall have priority over all other debts and obligations of MILEPOST, excluding administrative expenses of the Receivership, whether currently existing or hereinafter incurred, including without limitation any claims of general or limited partners of MILEPOST.

10. This Court determines and adjudicates that SBA has made a sufficient showing that MILEPOST has violated the Act and the Regulations, as alleged in the Complaint filed against MILEPOST in the instant action, to obtain the relief so requested.

DATED this 13 day of January, 2005.

UNITED STATES DISTRICT COURT JUDGE

SEEN, STIPULATED AND AGREED:

Milepost Ventures, L.P., through its authorized representative

By: Christie B. Colan

Title: General Partner

Milepost Ventures Management, Inc.
General Partner of Milepost Ventures, L.P.

Date: _____

United States Small Business Administration

By: Thomas G. Morris

Thomas G. Morris, Director
Office of Liquidation

Date: 01-26-05

1 9. ... //

2 10. This Court determines and adjudicates that SBA has made a sufficient showing
3 that MILEPOST has violated the Act and the Regulations, as alleged in the Complaint
4 filed against MILEPOST in the instant action, to obtain the relief so requested.
5

6
7 **PURSUANT TO STIPULATION, IT IS SO ORDERED,**

8 DATED this 3rd day of June, 2005.

9
10
11 ~~UNITED STATES DISTRICT COURT JUDGE~~

12 EDWARD M. CHEN
13 UNITED STATES MAGISTRATE JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STIPULATION FOR CONSENT ORDER OF RECEIVERSHIP